

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DOUGLAS MITCHELL,

Plaintiff,

v.

CASE NO. 06-14296
HON. LAWRENCE P. ZATKOFF

ALLIED INTERSTATE, INC.,

Defendant.

_____ /

OPINION AND ORDER

Plaintiff filed his complaint on September 28, 2006. On October 12, 2006, Defendant made an offer of judgment pursuant to Federal Rule of Civil Procedure 68. The offer was for the amount of \$1,151.00, plus costs and reasonable attorney fees incurred to date. On October 16, 2006, Plaintiff accepted the offer. Included in the acceptance was a statement that the costs and attorney fees were \$2,500.00. On October 20, 2006, the Court issued an order dismissing Plaintiff's state law claims. Defendant then filed a motion challenging Plaintiff's statement regarding the amount of costs and attorney fees, and Plaintiff responded to the motion.

A. State Law Claims

Given that Defendant's offer and Plaintiff's acceptance occurred before the Court dismissed Plaintiff's state law claims, the Court will withdraw its order dismissing Plaintiff's state law claims, and will retain jurisdiction over all the claims originally filed in Plaintiff's complaint.

B. Defendant's Offer and Plaintiff's Acceptance

Defendant's offer read as follows:

Pursuant to Fed. R. Civ P. 68, defendant, Allied Interstate, Inc., hereby tenders an offer to allow judgment to be taken against it in the amount of \$1,151.00, plus costs

and reasonable attorney fees incurred to date.

Plaintiff's acceptance read as follows:

Plaintiff, by counsel, pursuant to FRCP 68, hereby accepts Defendant Allied's Offer of Judgment for \$1,151.00, plus costs and reasonable attorney fees incurred to date, those fees and costs being \$2500.00.

The Court finds that Plaintiff unequivocally accepted Defendant's offer, and that his acceptance was not conditioned on receiving costs and attorney fees of \$2,500.00. The Court agrees with Defendant that the determination of reasonable attorney fees lies with the Court.

Plaintiff's counsel argues that Defendant's offer of judgment was improper because it did not specify the amount of attorney fees, and that he should receive additional attorney fees for work done after his acceptance. This argument is without merit. There was nothing improper in Defendant offering a judgment of "costs and reasonable attorney fees incurred to date," and the offer should not be construed as giving Plaintiff the ability to unilaterally determine the amount of those fees. The Court will enter judgment pursuant to Defendant's offer. Plaintiff may submit a brief detailing his attorney fees, and Defendant may respond if it wishes.

Accordingly, the Court WITHDRAWS its October 20, 2006 order dismissing Plaintiff's state law claims. The Court enters judgment in favor of Plaintiff in the amount of \$1,151.00, plus costs and reasonable attorney fees incurred prior to October 12, 2006.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff

LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: November 15, 2006

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on November 15, 2006.

s/Marie E. Verlinde

Case Manager
(810) 984-3290